UNITED STATES *v.* READING COMPANY.

TEMPLE IRON COMPANY *v.* UNITED STATES.

READING COMPANY *v.* UNITED STATES.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Nos. 198, 206, 217. Motions to modify decree submitted January 28, 1913.—Decided April 7, 1913.

The mandate in this case modified as to certain of the independent companies having some of the sixty-five per cent contracts referred to in the opinion, 226 U. S. 324.

THE facts are stated in the opinion.

Mr. Adelbert Moot for the Hillside Coal & Iron Company.

Mr. William S. Jenney and *Mr. John G. Johnson* for the Delaware, Lackawanna & Western Railroad Company.

Mr. Gilbert Collins and *Mr. William H. Corbin* for the New York, Susquehanna & Western Coal Company.

Mr. George F. Brownell for the Pennsylvania Coal Company.

Mr. Frank H. Platt for the Elk Hill Coal & Iron Company.

Mr. Attorney General Wickersham, Mr. James C. McReynolds and *Mr. G. Carroll Todd* for the United States.

The following order was entered:

This cause came on again to be heard upon five several petitions filed by the Pennsylvania Coal Company, The Elk Hill Coal & Iron Company, The New York, Susquehanna and Western Coal Company, Hillside Coal & Iron Company, and the Delaware, Lackawanna & Western Railroad Company, parties to the cause as alleged holders of sixty-five per cent. coal contracts, praying that the direction in the opinion heretofore filed that the cause should be remanded with direction to enter a decree cancelling each and every of the sixty-five per cent. contracts referred to in the pleadings held by any of the parties to the cause, and for a modification of the mandate so as to exclude from cancellation the five several contracts described and referred to in the said five separate petitions.

And it appearing that the United States, by its Attorney General, has answered the several petitions, and that in respect to that of the Pennsylvania Coal Company assents to the petition and consents that such modification be made as to dismiss the bill in so far as it is thereby sought to cancel the contract between the Pennsylvania Coal Company and the Elk Hill Coal & Iron Company of March 1, 1902, referred to in the petition of the Pennsylvania Coal Company, upon the concession that the agreement "is substantially different from the series of agreements known as the sixty-five per cent. contracts adjudged unlawful by this court," it is accordingly so ordered.

As to the applications of the four other petitioners named above for like relief, the United States denies and contests the right of each, contending that in substance and principle the facts in respect of each of the contracts in respect of which relief is sought, are not similar to the contract between the Pennsylvania Coal Company and the Elk Hill Coal & Iron Company, but fall within the general series of the sixty-five per cent. contracts condemned by the judgment of this court.

Upon this issue the transcript is confusing and the briefs inadequate. The court therefore deems it wise in the exercise of its judgment to decline any determination of the question upon the present record. It is therefore ordered that the mandate of this court be so modified as to exclude from the direction to cancel the sixty-five per cent. contracts referred to in the pleadings the said contracts mentioned in the four petitions, namely, that of the Elk Hill Coal & Iron Company, the New York, Susquehanna & Western Coal Co., Hillside Coal & Iron Company, and the Delaware, Lackawanna & Western Railroad Company, and that the cause, so far as concerns the contracts of the said petitioners, be remanded to the District Court with direction to hear and determine the merits as presented by said petitioners, and make such decree as law and justice require.

Per MR. JUSTICE LURTON.

MR. JUSTICE DAY, MR. JUSTICE HUGHES and MR. JUSTICE PITNEY did not participate in the original case, nor in the making of this order.